



June 21, 2000

Mr. James L. Hall  
Assistant General Counsel  
Texas Department of Criminal Justice  
P. O. Box 4004  
Huntsville, Texas 77342

OR2000-2362

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136439

The Texas Department of Criminal Justice (the "department") received a request for information related to a specific job posting. You claim that portions of the requested interview documents are excepted from disclosure under sections 552.117 and 552.122 of the Government Code. You have submitted only the interview documents for our review; therefore, we assume you have released to the requestor the remaining requested information. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122(b) includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122(b) exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Traditionally, this office has applied section 552.122(b) where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). After reviewing the submitted information, we believe that questions 1, 3, 5, 6, and 7 and related information are protected "test items." They "measure the skill, knowledge, intelligence, capacities, or aptitudes of an individual" and are a "standard means by which an individual's or group's knowledge or ability in a particular area is evaluated." *See* Attorney General Opinion JM-640 at 3 (1987); Open Records Decision No. 626 at 6-8 (1994) (when answers to test questions might reveal the questions themselves, the information may be withheld under section 552.122).

Section 552.117 of the Government Code excepts from public disclosure information relating to the home address, home telephone number, and social security number of a current or former government employee or official, as well as information revealing whether the employee or officials has family members when the public employee requests that this information be kept confidential under section 552.024. Therefore, section 552.117 requires the department to withhold from disclosure the social security number of the department's employee's if they requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). However, section 552.117, by its terms, does not apply to anyone but current or former government employees or officials. *See, e.g.,* Open Records Decision No. 455 (1987) (section 552.117 does not apply to applicants). Accordingly, the department may not withhold from disclosure the applicant's social security number.

However, federal law may prohibit disclosure of the social security number of any department employee not electing under section 552.024 to have the information kept confidential, and the applicant's social security number. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and, therefore, excepted from public disclosure under section 552.101 of the Public Information Act on the basis of that federal provision. We caution, however, that section 552.353 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by department pursuant to any provision of law enacted on or after October 1, 1990.

In summary, section 552.122(b) allows you to withhold from disclosure interview question numbers 1, 3, 5, 6, and 7 and related information as "test items." You must release to the requestor the remaining interview information. Section 552.117 of the Government Code prohibits release of the social security number of any department employee who has made an election under section 552.024 to have this information kept confidential. Section 552.117 does not make confidential the applicant's social security numbers. The social security numbers of department employees who have not elected, as of the date the department received the request for information, to have their personal information kept confidential, and the social security number of the applicant, may be confidential under section 552.101 of the Government Code and federal law.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Carla Gay Dickson  
Assistant Attorney General  
Open Records Division

CGD/ljp

Ref: ID# 136439

Encl. Submitted documents

cc: Ms. Jamie Scroggins  
41 Calvary Road #26  
Huntsville, Texas 77240  
(w/o enclosures)